

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JOSHUA S. HODGSON,

Plaintiff,

-against-

9:22-CV-275 (LEK/DJS)

RICHARD GIARDINO, *et al.*,

Defendants.

MEMORANDUM-DECISION AND ORDER

I. INTRODUCTION

Plaintiff Joshua S. Hodgson brings this pro se action against Sheriff Richard Giardino, Captain Keith Ackerknecht, Administration Sergeant Willis Wood, Officer Blake, Officer Siegle, and the County of Fulton, New York (collectively, “Defendants”). Plaintiff asserts claims arising during his confinement at the Fulton County Correctional Facility, while he was a pretrial detainee. See Dkt. No. 1 (“Complaint”) at 4.

On June 6, 2022, the Court conducted a sufficiency review of Plaintiff’s Complaint and dismissed most of his claims. See Dkt. No. 7 (“June 2022 MDO”) at 14–16. However, the Court ordered Defendants to respond to Plaintiff’s (1) First and Fourteenth Amendment retaliation claims against Wood, (2) Fourteenth Amendment excessive force claim against Wood, and (3) Fourteenth Amendment failure to intervene claims against Blake and Siegle. See id. On April 3, 2023, Defendants filed a motion for summary judgment on Plaintiff’s remaining claims. Dkt. No. 19 (“Summary Judgment Motion” or “Motion”). Plaintiff did not respond to this motion, despite seeking and receiving multiple extensions to do so. See Dkt. Nos. 23, 24, 25, 26. On November 21, 2023, the Honorable Daniel J. Stewart, United States Magistrate Judge, issued a Report-

Recommendation and Order in which he recommended that Defendant's Motion be granted in its entirety. Dkt. No. 29 ("Report and Recommendation").

No party has filed objections to the Report and Recommendation. For the reasons that follow, the Court adopts the Report and Recommendation in its entirety.

II. BACKGROUND

The Court assumes familiarity with the factual background detailed in both Judge Stewart's Report and Recommendation, see id. at 2–4, and this Court's June 2022 MDO, see June 2022 MDO at 4–6.

III. STANDARD OF REVIEW

"Within fourteen days after being served with a copy [of the Magistrate Judge's report and recommendation], any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court." 28 U.S.C. § 636(b)(1)(C); see also L.R. 72.1. However, if no objections are made, a district court need only review a report and recommendation for clear error. See DiPilato v. 7-Eleven, Inc., 662 F. Supp. 2d 333, 339 (S.D.N.Y. 2009) ("The district court may adopt those portions of a report and recommendation to which no timely objections have been made, provided no clear error is apparent from the face of the record."). "Clear error is present when upon review of the entire record, the court is left with the definite and firm conviction that a mistake has been committed." Rivera v. Fed. Bureau of Prisons, 368 F. Supp. 3d 741, 744 (S.D.N.Y. 2019) (cleaned up). Additionally, a district court will ordinarily refuse to consider an argument that could have been, but was not, presented to the magistrate judge in the first instance. See Hubbard v. Kelley, 752 F. Supp. 2d 311, 312–13 (W.D.N.Y. 2009) ("In this circuit, it is established law that a district judge will not consider new arguments raised in objections to a magistrate judge's report and recommendation that could

have been raised before the magistrate but were not.” (internal quotation marks omitted)). Upon review, a court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C).

IV. DISCUSSION

No party objected to the Report and Recommendation “[w]ithin fourteen days after being served with a copy” of it. Id. Accordingly, the Court reviews the Report and Recommendation for clear error. Having found none, the Court approves and adopts the Report and Recommendation in its entirety.

V. CONCLUSION

Accordingly, it is hereby:

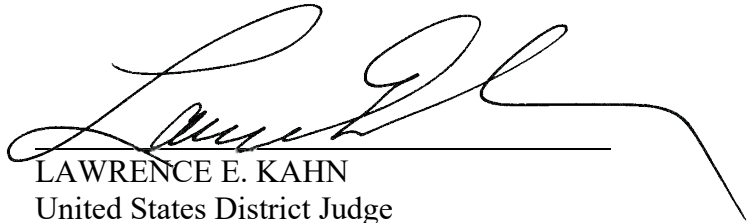
ORDERED, that the Report and Recommendation (Dkt. No. 29) is **APPROVED and ADOPTED in its entirety**; and it is further

ORDERED, that Plaintiff’s Complaint (Dkt. No. 1) is **DISMISSED with prejudice**;¹ and it is further

ORDERED, that the Clerk serve a copy of this Memorandum-Decision and Order on all parties in accordance with the Local Rules.

IT IS SO ORDERED.

DATED: January 23, 2024
Albany, New York


LAWRENCE E. KAHN
United States District Judge

¹ See Semtek Int’l Inc. v. Lockheed Martin Corp., 531 U.S. 497, 505 (2001) (equating adjudication on the merits with dismissal with prejudice).